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PART II—Section 3

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No. 313] NEW DELHI, TUESDAY, DECEMBER 15, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 1st December 1953

S.R.O. 2271.—Whereas the elections of Shri Gopal Saran Singh and Shri Het Ram, as members of the Legislative Assembly of the State of Vindhya Pradesh, from the Nagod constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sarju Prasad Namdeo, son of Shri Ram Karan Namdeo, resident of Nagod, District Satna;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG, VINDHYA
PRADESH.

ELECTION PETITION No. 303 OF 1952

PRESENT:

1. Shri S. N. Valsh, B.A., LL.B., Retd. District and Sessions Judge, U.P.—
Chairman.
2. Dr. L. N. Misra, M.A., LL.B., Ph.D., Retd. District and Session Judge,
U. P.—*Member.*
3. Shri P. Lobo, Advocate, Supreme Court—*Member.*
1. Shri Sarju Prasad Namdeo, s/o Shri Ram Karan Namdeo, r/o Nagod,
District Satna—*Petitioner.*

Vs.

1. Shri Gopal Saran Singh, r/o Pataura, District Satna (Congress).
2. Shri Het Ram, r/o Pataura, District Satna (Congress).
3. Shri Faquir Chand Chopra, r/o Maihar, District Satna (Socialist).
4. Shri Ram Phal, Katia, District Satna (Ram Rajya Parishad).
5. Shri Bans Swaroop, r/o Bikra, District Satna (K.M.P.P.).
6. Shri Raj Bahadur Singh, Vakil Nagod, District Satna (Jan Sangh).
7. Shri Ram Dass, District Satna (Socialist).
8. Shri Babu Lal, District Satna (Jan Sangh)—*Respondents.*

This is an election petition filed by Sarju Prasad Namdeo calling in question the election of the Respondents Nos. 1 and 2 who were Congress candidates and who had been returned to the Legislative Assembly of Vindhya Pradesh from Nagod Constituency which is a double member constituency. The petitioner and the Respondents Nos. 1, 3, 4 and 5 were the candidates for the general seat while the Respondents Nos. 2, 6, 7 and 8 were the candidates for the reserved seat in this constituency. The petitioner prays that the election of the Respondents Nos. 1 and 2 be declared void on the grounds set forth in the petition and the list of particulars including defective ballot boxes, their tampering, the exercise of undue influence coercion and intimidation, the non-compliance with the rules and orders by Government servants and the other corrupt practices and illegalities to which a detailed reference will be made presently under the issues.

Only the Respondents Nos. 1 and 2 contested the petition by filing written statements wherein they categorically denied all the grounds for declaring their election to be void by pressing that certain matters be not allowed to go to trial. Issues were thus struck, out of which Nos. 10, 11, 12, 14 and 15 were first heard and disposed of in our order dated February 20, 1953. As a result of our findings on the said preliminary issues and within the limits specified therein, evidence was, however, allowed to be given on the following remaining issues which we now take up for disposal:—

REMAINING ISSUES

1. Were the ballot boxes, used in the Election, defective and contrary to the mandatory provisions of law, could they be unlocked and the ballot papers taken out therefrom and put in without their seals being broken and has this resulted in a serious non-compliance with the provisions of the Constitution and the acts and Rules made for holding Elections? If so, how is the petition affected thereby?
2. Was the sealing of the ballot boxes not done as required by clause 5 of rule 21?
3. Was there any non-compliance, on the part of the Presiding Officers with the provisions of Rules 32 and 33 of the Representation of the People's Rules 1951 as alleged in clauses (c) and (d) of para. 6 of the petition?
4. Was there any non-compliance with or breach of the Rules 49 and 50 on the part of the Returning Officer as alleged in clauses (e) and (i) of para. 6 of the petition? If so, what is the effect?
5. Were the arrangements for the safe transport of the ballot boxes and papers and for their safe custody, defective as alleged in clause (g) of para. 6 of the petition? And were the ballot boxes in fact tampered with and ballot papers extracted and introduced as alleged in clause (g) of para. 6 of the petition? If so, what is the effect?
6. Are the allegations in clause (h) of para. 6 correct? If so, what is the effect?
7. Are the allegations in clauses (i), (j), (k), (l), (m) and (n) of para. 6 of the petition correct? If so, what is the effect?
8. Are the allegations in clauses (o) to (y) of para. 6 of the petition correct? If so, what is the effect?
9. Are the allegations in particulars Nos. 1 to 9 of the list correct? If so, what is the effect?
- 13 To what relief, if any, is the petitioner entitled?

FINDINGS

Issues Nos. 1, 2 and 5.—The allegations relating to these issues which may be disposed of together are set out in clauses (a), (b) and (g) of para. 6 of the petition. It is alleged therein that the ballot boxes used in this election were defective and did not comply with the provisions of clauses (1) and (5) of Rules 21 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, that these ballot boxes were in fact tampered with and that the arrangements for their safe transport and custody were defective. The ballot boxes used in this constituency and, as a matter of fact, in all the constituencies in Vindhya Pradesh, were of Godrej type. For the reasons given in E.P. No. 259 of 1952, Jang Bahadur Singh Vs. Basant Lal and others as well as in E.P. No. 258 of 1952 Lakshmi Narain Naik Vs. Lala Ram Bajpai and others, we have held that there has been a non-compliance with the provisions of clauses 1 and 5 of Rule 21 of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951. The same observations and reasons hold good for this petition as well. We accordingly hold that there has been such a non-compliance in this petition as well, but as has been held in the said connected petitions, the mere non-compliance with the

afresaid provisions, is no ground for declaring the Election of the Respondents Nos. 1 and 2 to be void under Section 100(2) (c) of the R.P. Act, 1951, unless the result of the election is shown to have been materially affected by the said non-compliance. The burden of proof lay on the petitioner to establish that the result of the election had been materially affected by such non-compliance. As the petitioner has produced no evidence to show that there was any tampering in fact with the ballot boxes or that the ballot boxes were ever kept in any unsafe place where there could be any possibility of their tampering, we hold that the result of the election had not been materially affected by the non-compliance of the rules and decide these issues against the petitioner.

Issue No. 3.—The allegations relating to this issue are contained in clauses (c) and (d) of the petition. It was maintained that there was a non-compliance on the part of the Presiding Officers with the provisions of Rules 32 and 33 of the Representation of People (Conduct of Election & Election Petitions) Rules, 1951. Our attention was particularly drawn by the learned counsel for the petitioner to the non-compliance of Rule 33 and it was said that the sealed packets were not accompanied by an account of ballot papers in Form 10 as provided for in the said Rule. Attention was drawn to the fact that no account of ballot papers in Form 10 was available in respect of nine polling stations. When the Returning Officer at Satna (P.W. 28) was being examined two out of the numerous sealed packets were opened on the request of the petitioner. On opening the said packets one Form 10 was recovered from each. The Returning Officer explained that he did not open those packets before as they either contained the endorsement that there were marked electoral rolls in them or there was a suspicion to the same effect. He pointed out that he was not entitled to open sealed packets containing marked Electoral Rolls although he admitted that he had opened some sealed packets in search for Form 10. The packets thus opened were resealed immediately after taking out Form 10 therefrom and an endorsement was made to that effect on the envelopes, as marked Electoral Rolls were also found therein. The two sealed packets opened before us, from which two Forms 10 were recovered, were marked Exs. 317 and 318 and the recovered Forms 10 were marked Exs. 317/3 and 318/6/A. The learned counsel for the petitioner was asked if he wanted other sealed packets to be opened for the remaining Forms 10. He did not want this to be done, evidently because the remaining missing Forms 10 were likely to be found out. We were thoroughly convinced at that stage that there was no substance in the allegation of the petitioner that no account of ballot boxes in Form 10 was prepared as alleged by him and hence did not devote any further time in trying to recover all the missing Forms 10 from the sealed envelopes. This would have occupied a considerable time. We have also no hesitation in accepting the testimony of the Returning Officer to the effect that he was able to prepare check slips relating to those polling stations, of which Forms 10 were missing, by referring to the register. He in fact, demonstrated to us how that was possible. We, therefore, reject the contention of the petitioner that at some polling stations no Forms 10 were prepared at all. On the contrary we hold that they were duly prepared at all polling stations but on account of mistakes of the Presiding Officers at certain polling stations the Forms 10 were kept in sealed packets along with the marked Electoral Rolls etc. This should not have been done. No non-compliance of Rules 32 or 33 has thus been made out by the petitioner. We need not repeat that proof of mere non-compliance of rules is not enough to declare any election void unless a petitioner is able to show that such non-compliance had materially affected the result of the election. This issue is decided against the petitioner.

Issues Nos. 4 and 6.—The allegations relating to these two issues are contained in clauses (e), (f) and (h) of para 6 of the petition but since these two issues have not been pressed nor is there any evidence to substantiate the said allegations, we decide the issues against the petitioner.

Issue No. 7.—The allegations relating to this issue are contained in clauses (i), (j), (k), (l), (m) and (n) of para. 6 of the petition. The learned counsel for the petitioner did not argue and gave up the allegations in clauses (k) and (n). Those two allegations are, therefore, decided against the petitioner. The remaining allegations have also not been established by evidence. In fact the evidence of the Returning Officer negatives these allegations. We entirely accept the explanation given by the Returning Officer (R.W. 28) and hold that there was no irregularity of the kind alleged by the petitioner. The issue is decided against the petitioner.

Issues Nos. 8 and 9.—These two issues somewhat overlap and have to be taken together. The allegations relating to these issues are contained in clauses (o) to (y) of para. 6 of the petition and the list of particulars 1 to 9. We may point

out at the outset that no issue was framed by us on the basis of the allegations contained in clauses (z) to (cc) as they were deemed to be too general to go to trial. The allegation in clause (z) was as follows:—

“Because the election of the returned candidate has been procured by illegal and corrupt practices.”

We mention this allegation as the learned counsel for the petitioner relied on it in his argument. To frame an issue on such a general allegation and to let it go to trial would have been in wanton disregard of the provisions of Section 83 of the R. P. Act, 1951. We were not oblivious of the fact that the other allegations in para. 6, referred to above, were also somewhat general but on reading the petition and the particulars together some instances of the alleged corrupt practices could be gathered therefrom. We accordingly held in our order dated 20th February 1953, passed on the preliminary issue No. 12, that evidence was to be confined to the instances contained in the petition and the list of particulars taken together. The trial on facts was thus limited to the instances in the petition and the list of particulars. It was not our intention to allow evidence of any and every illegal or corrupt practice, thought out subsequently by the petitioner by allowing the specified instances to go to trial for what they were worth. For this reason the clause (z) was not mentioned in any issue. The learned counsel for the petitioner relies on clauses (z) and (o) in support of his evidence for an entirely new instance of corrupt practice tried to be made out by him against the respondent No. 1. In certain other petitions before us there was a distinct plea taken in the petitions or the particulars that the employment of zamindars or mukhias by the returned candidate was hit by the provision of section 123(8) in as much as the zamindars and Mukhias in the erstwhile states, now forming Vindhya Pradesh, were village headmen or village officers within the meaning of the Explanation (b) to Sec 123(8) of R. P. Act, 1951. This appointment of Mukhias and zamindars as polling agents was thus tried to be made out a major corrupt practice. No such allegation either in the petition or in the list of particulars was made in this case. Evidence was, however, recorded as the junior counsel representing the Respondent No. 1 did not bring the said omission in the pleading to our notice. An objection has now been raised on behalf of the respondents Nos. 1 and 2 that the evidence was inadmissible and should not be considered. It is in this connection that the learned counsel for the petitioner takes his stand behind the clauses (z) and (o) of the petition and maintains that the evidence would be admissible under them.

We have heard the learned counsel for the parties at some length on the point of the inadmissibility of the evidence relating to the allegation of an entirely new major corrupt practice on the part of the Respondents Nos. 1 and 2 which was neither mentioned in the particulars nor in the petition. The learned counsel for the petitioner maintains that the evidence could be given under clause (o) and (z) of para. 6. On the other hand the learned counsel for the respondents Nos. 1 and 2 maintains that evidence of an entirely new major corrupt practice could not be given under any of the two general clauses of para. 6. We entirely agree with the contention of the learned counsel for the respondents Nos. 1 and 2. The allegation contained in clause (o) of para. 6 may also be quoted. It runs as follows:—

“Because the V. P. Government officials of all ranks were bitterly against the K.M.P. Party to which the petitioner belonged, these officials actively participated in the election by canvassing and other mal-practices, undue influence and coercion with a view to secure the defeat of the K.M.P. Party. The various illegalities and irregularities complained of in this petition were perpetrated by the V.P. Government officials with the active connivance with the Congress party leaders in the V. P. and the Respondent No. 1.”

In our opinion the above allegations refer to the objectionable acts of the V. P. Officials with the connivance of the Respondent No. 1 and not to any objectionable act of the Respondent No. 1 directly. The word “connivance” in its ordinary dictionary meaning means, to stand by and is short of actual participation in an act. To allow evidence to the effect that the Respondent No. 1 appointed certain zamindars as his polling agents and as such committed the major corrupt practice contemplated under Section 123(8) of the R. P. Act, 1951, would mean that we allow the petitioner to prove the direct commission of the alleged corrupt practice by the Respondent No. 1 himself. It would not be evidence of connivance only for acts of V. P. officials complained against. The evidence of direct commission of a major corrupt practice by the Respondent No. 1 cannot, in our opinion, be given under the allegation that the Respondent No. 1 connived at some illegal conduct of the V. P. officials. The act attributed to the respondent No. 1 goes beyond the ambit of mere connivance. We, therefore exclude the evidence now alleged to have been led by the petitioner in this behalf, under clause (o) read with clause (x), under which it could not be given

In certain other petitions before us, we may point out, there was an admission of the returned candidate relating to the employment of zamindars or mukhias as polling agents although there was no clear pleading in that behalf. In this petition, however, there is not only no allegation in the pleadings but also there is no admission of the Respondent No. 1 in that behalf. The Respondent No. 1 did not enter the witness box and so did not afford an opportunity to the petitioner to extract any admission from him relating to this alleged fresh instance of a major corrupt practice which the petitioner could not be allowed to prove for want of pleading its particulars under section 83, R.P. Act, 1951.

Once the evidence of the alleged major corrupt practice relating to the employment of the zamindars as the polling agents by the Respondent No. 1 is excluded as inadmissible, for want of pleadings within the meaning of Section 83 of the R. P. Act, 1951, only the general allegations against the V. P. Government officials of all ranks would remain to be considered. We shall take up the instances alleged in the petition or the list of particulars relating to Government officials while dealing with the instances of undue influence or canvassing clause-wise.

The corrupt practices, irregularities and illegalities alleged to have been committed by officials and non-officials are mentioned in clause (p) to (y) of para. 6 of the petition out of which some clauses are repeated verbatim in the particulars Nos. 1 to 7. We shall take up each of these instances separately under the various clauses aforesaid.

Clause (p). This clause runs as follows:—

“Because the respondent No. 1 stood as a Congress candidate and the whole of the Congress organisation including its members, workers and sympathisers were working and supporting Respondent No. 1 and they should all be deemed to be the agents of Respondent No. 1. All of them openly intimidated and exerted undue influence on the voters to vote for the Respondent No. 1 and to refrain from voting for the petitioner. This state of affairs prevailed extensively at the Election owing to which the election has not been a free and fair election.”

This allegation was rather general and it was perhaps for that reason that the learned counsel for the petitioner did not press it in his arguments. The allegation is thus decided in the negative.

Clause (q) and particular No. 1.

This clause reads as follows:—

“Because in polling station Pithorabad the agent of Respondent No. 1, Ram Lakhan Singh who is also brother of Respondent No. 1 and who was also working for Respondent No. 2, procured the vote of a dead woman named Budhi, the wife of Bhagwat Singh, entered at No. 283 page 6 of the original list and 2 of the corrected list (Patwari Halka Pithorabad) by some person who was not actually the voter entered in the electoral Roll. Sm. Budhi real voter died 4 or 5 years ago. The petitioner's agent, Lal Yadu Nandan Singh challenged the vote and deposited Rs. 10 for the purpose. The Presiding Officer returned this money and filed the petitioner's said application. This action of the Presiding Officer meant that he upheld the objection. The above action of Ram Lakhan Singh amounts to a major corrupt practice and vitiates the election of Respondents Nos. 1 and 2.”

The gravamen of the charges was that Ram Lakhan Singh the brother and agent of Respondent No. 1, who was also working as agent for Respondent No. 2, abetted the offence of personation of a dead woman named Budhi wife of Bhagwat Singh by another woman of that name who was not the wife of Bhagwat Singh. This allegation is, however, entirely false. The woman who cast her vote as Budhi has been examined as a witness by the Respondents Nos. 1 and 2 and is R.W. 18. There is no suggestion on behalf of the petitioner that this witness was not the woman who had cast her vote or that her name was not Budhi. She deposes that no one stopped her from casting her vote and that no one called her out as “wife of Bhagwat Singh” when she went to vote as was attempted to be made out through witnesses by the petitioner. On the contrary she states that her name itself was called out. It stands admitted that the wife of Bhagwat Singh, who was the step daughter of Budhi (R.W. 18) was married to Bhagwat Singh and that Bhagwat Singh was a widower for the last many

years. R.W. 18 has been living with Bhagwat Singh for over 10 years. She is not the wife of Bhagwat Singh but his mother-in-law. In the Electoral Roll of this constituency as originally prepared the women voters were generally described without names as wife of so and so. The original Electoral Roll was, however, amended and the actual names of the women voters, omitting their husbands names were put down by way of amendment. This is clear from the original Electoral Roll. Ex. 283/2 (of Patwari Halka Pithorabad) in which relevant entry against No. 283 is "wife of Bhagwat Singh" under the column "Name of voter with the name of father or husband". The entry has been underlined by us in red pencil. The amendment substitutes the name of the voter, *vide* amending entry which has also been underlined in red pencil. The learned counsel for the petitioner has argued that the amendment merely supplies the omission of the names of women voters which were omitted in the original Electoral Roll and that the rest of the entry that stood in the Electoral Roll under the said column was not affected by the amendment. According to him, the amended entry should be read as "Budhi wife of Bhagwat Singh". This view is not correct. There were many names of women voters in the original Electoral Roll with names of their husbands and if the interpretation of the learned counsel for the petitioner were correct, there would have been no need to amend such correct entries also. But we find that the amending entry omitted the name of the husband. For example, the original entry against No. 281 of the original Electoral Roll was "Sheoraj Kour Randaman Singh". Name of the voter was evidently Sheoraj Kour. Her husband's name was evidently Randaman Singh. The amendment wants it to be read as merely "Sheoraj Kour". It is, therefore, quite clear that originally Budhi, who was living with Bhagwat Singh for the last many years was entered in the original Electoral Roll as wife of Bhagwat Singh but by amendment her name was brought on the Electoral Roll and her wrong description as wife of Bhagwat Singh was omitted. Bhagwat Singh has also been examined by the contesting Respondent and is R.W. 20. He deposes that only his mother-in-law and no other woman lives in his house and that her name is Budhi. He also refutes all the other allegations made relating to the false personation. The whole story of false personation has been built up by the petitioner evidently because wrong entry about Budhi was made in the original Electoral Roll. It has no substance. Even if Budhi had been wrongly described as wife of Bhagwat Singh in the Electoral Roll, there was no question of false personation as it was she and no one else who cast her vote and the mistake in her husbands name was immaterial. We, therefore, decide the point against the petitioner.

Clause (r) and Particular No. 2.

The allegation is:—

"Because on the 16th January in Mauhari polling station the petitioner saw Kanungo Brij Nandan Singh canvassing support for the Congress candidate along with a Congress worker. This matter was reported to the Presiding Officer and also to the Returning Officer."

The names of voters to whose houses Brij Nandan Singh is said to have gone for the purpose of canvassing in the village are not disclosed in either the petition or the particulars. The petitioner (P.W. 28) deposes that he was informed of the canvassing done by Brij Nandan Singh "from door to door" in the village by Tirath Prasad (P.W. 11) and Daddi (P.W. 12). These two witnesses do not depose that they saw Brij Nandan Singh going from door to door. P.W. 11 does not even say that he informed the petitioner of the canvassing by Brij Nandan Singh nor speaks of the arrival of the petitioner in the village. P.W. 12 deposes that he informed the petitioner 4 or 6 days after that date and that too outside the village. There is no indication in the evidence of either the petitioner or P.W. 12 why they met outside the village, as if by appointment. It is strange how the petitioner speaks of canvassing by Brij Nandan Singh from door to door in his letter to the Returning Officer, Ex. 264, when his informers do not make that out. The fact that Brij Nandan Singh was related to the Respondent No. 1 coupled with the basic assumption made by the petitioner that the V. P. officials of all rank were against the K.M.P. Party to which the petitioner belonged, was perhaps at the root of this false allegation made against Brij Nandan Singh who is R.W. 13 and who denies the allegation. It is definitely false in Ex. 264 that the petitioner himself saw Brij Nandan Singh, Supervisor Kanungo, going from door to door in village Mauhari with Jagannath Prasad Chaturvedi a Congress worker. It is also not established by the petitioner's witnesses that many persons saw Brij Nandan Singh going from door to door with Jagannath Prasad Chaturvedi. The telegram Ex. 266 and the letter 264 may have been sent to the Returning Officer, Satna, either on suspicion or by way of Peshbandi. An enquiry was held by the Tahsildar Nagod (R.W. 22) who found the allegation false. The report of the Tahsildar is Ex. 262. This report

is criticised by the learned counsel for the petitioner on what the Tahsildar has said in his evidence, viz. that he made enquiries if everything went well at which he was assured to that effect and that no subsequent enquiry was made by him when directed by the Returning Officer. The fact, however, remains that the Tahsildar was not convinced of the truth of the allegations made against Brij Nandan Singh. He may or may not have made a proper enquiry. The enquiry was again reopened before us and we find that there is no truth in the allegations made against Brij Nandan Singh.

The learned counsel for the petitioner has drawn our attention to the alleged reports by the polling agent of the petitioner named Yadunandan Singh, who is also a relation of the Respondent No. 1. One of these reports, viz. Ex. 289, is about the alleged false personation of a voter while the other report, Ex. 285, relates to treating of the voters to which we shall presently refer under another clause. These two reports are addressed to the petitioner and are proved not to be in the hand-writing of Yadunandan Singh whose signatures only appear at the end of the body-writing in these reports. The very look of these reports is suspicious. Yadunandan Singh was admittedly an educated man. His signatures also disclose that he knew Hindi very well yet it is strange that the reports are not in his hand-writing. They have been written by one Sadashiv Bajpai, a staunch supporter of the petitioner, who has appeared as a witness for him and is P.W. 32. The contention of the respondents' counsel is that the signatures of Yadunandan Singh on Exs. 288 and 289 had been obtained before hand while the papers were blank. Our attention is drawn to the wordings of Ex. 288 to show that it was an unnatural way of writing. This report starts with the words "Men ap ki taraf se polling agent menkarrar hun". If this report was given by Yadunandan Singh to the petitioner personally there was no need in it to mention that Yadunandan Singh had been appointed a polling agent by the petitioner. This sentence certainly sounds unnatural. These two reports appear to have been prepared for purposes of the election petition. We would not be surprised if signatures of Yadunandan Singh had been taken on two blank papers by the petitioner by way of precaution before employing Yadunandan Singh as a polling agent by the petitioner. Yadunandan Singh was known to be related to the Respondent No. 1 and hence a precaution of that kind would not be an unexpected move on the part of an ex-Dewan of Nagod Raj. The petitioner himself deposes in his cross examination that he knew Yadunandan Singh, his polling agent, for the last 10 or 12 years, that he was his party worker, that he (petitioner) had some doubts about him (Yadunandan Singh) on 13th January, that subsequently, after he (petitioner) had adopted the proper treatment the doubt was removed, and that thereafter his (petitioner's) confidence in him (Yadunandan Singh) was restored and he (Yadunandan Singh) continued working for him (petitioner). This is indicative of the methods of working of the petitioner and the fact that Yadunandan Singh, although employed as a polling agent, was not deemed to be above suspicion, as he was related to the Respondent No. 1. We are inclined to hold that these two reports of Yadunandan Singh were written up for the purposes of the petition subsequently on blank papers bearing only the signatures of Yadunandan Singh and are not to be depended upon. We, therefore, hold that there is no truth in these allegations.

Clauses (s) and (t) and Particulars 3 and 4.

These clauses run as follows:—

"(s) Because on 17th January, 1952 in polling station Patna, Deputy Ranger, Pandit Dwarka Prasad was found canvassing support for the Congress inside the polling booth. This was done in connivance with Respondents Nos. 1 and 2. He had ultimately to be removed therefrom on the objection of the petitioner's polling agent.

(t) Because on 15th January, 1952, in polling station Saleha the same Deputy Ranger, Pandit Dwarka Prasad was found canvassing for the Congress Candidate."

The same allegations are repeated in particulars Nos. 3 and 4. No evidence, had, however, been given about the alleged canvassing by Dwarka Prasad, Deputy Ranger at Saleha. The evidence relating to his canvassing at Patna polling station consists of the testimony of 6 witnesses out of whom 4 are said to have turned hostile. The remaining 2 witnesses on whose testimony reliance is placed are Baldeo Dutta Sharma (P.W. 24) and Sundar Lal (P.W. 25). The first witness besides being a worker of the K.M.P. Party in the last election at Ganj, Saleha and Patna was, on his own admission, the Kamdar of the Rani of Nagod when the petitioner was the Dewan of Nagod. No reliance can be placed on his testimony as he does not appear to be an independent witness. The second witness talks of canvassing done by Dwarka Prasad, Deputy Ranger, inside the

booth, which is impossible to believe. The Deputy Ranger being a Government servant would not be so foolish as to openly commit the offence of canvassing inside the booth punishable as a cognizable offence under section 130 of the R.P. Act. Dwarka Prasad is R.W. 31 and denies the allegation. He says that he did not even go to Patna. We, therefore, hold that the allegation of canvassing by Dwarka Prasad, Deputy Ranger, is not proved.

Clauses (u) and (v).

These two clauses have not been pressed before us in the arguments and we, therefore, hold that the allegations contained therein have not been proved.

Clauses (w) and (v) and Particulars Nos. 5 & 7.

These clauses run as follows:—

“(w) Because on 11th January 1952 at Pataura polling station and on 13th January 1952 at Pithaurabad polling station and other polling stations the Presiding Officers and polling officers were entertained and given lunch by the Congress candidates, Respondent Nos. 1 and 2 and their agents, workers and supporters. These acts were illegal and amounted to illegal gratification.

(y) Because the Respondent No. 1, his workers and supporters entertained the voters of Pithaurabad with food on the Election day in order to induce them to vote for the Respondents Nos. 1 and 2.”

The particulars 5 and 7 contain a mere repetition of these clauses and need not be quoted. The evidence relating to the treating of voters and the staff consists of the testimony of Rameshwar Prasad (P.W. 21), Raghubar Saran (P.W. 22), Kashi Prasad (P.W. 23), the petitioner himself (P.W. 28) and Pulan Singh (P.W. 31). Their testimony is not dependable. P.W. 21 did not name the voters who were entertained with food except Mangleshwar Singh (R.W. 9) who denies the allegation. Their evidence is also conflicting about the number of persons who brought in the food for distribution. P.W. 22 says only one man brought the food, P.W. 21 says that two men brought the food while P.W. 23 says that 3 men brought the food. Besides, P.W. 22 names only Kashi Prasad and Sundar Lal who took food. Sundar Lal was admittedly a worker of the Congress and there was no harm if he was fed by the Respondents Nos. 1 and 2. Kashi Prasad was a K. M. P. Party worker and his evidence cannot be accepted in this behalf. Similarly P.W. 23 is also a K. M. P. Party worker and his testimony does not inspire confidence. P.W. 31 does not name any voter who was fed. The petitioner merely proves the signatures of Yadunandan Singh, a relation of the Respondent No. 1, on the two alleged reports by Yadunandan Singh to which reference has already been made under clause (r) and particular No. 2. These two reports are Exs. 288 and 289. We have already observed under clause (r) and particular No. 2 above that these two reports of Yadunandan Singh were written up for the purpose of the petition subsequently on blanks papers bearing the signatures of Yadunandan Singh and were not to be depended upon. The report Ex. 288 relating to the alleged false personation of a voter has already been disposed of. There was also an allegation made in it that Lalji, brother of Respondent No. 1 had distributed guavas freely to the voters and that the polling staff including Presiding Officer were given Puris to eat brought from his house. In the report Ex. 289 again the same allegations relating to false personation and the feeding of the staff were repeated. These two reports do not indicate that the voters were given food to eat. Hence the oral evidence to that effect becomes undependable. The telegram sent by the petitioner to the Returning Officer Satna, Ex. 259, is said to be based on these reports of Yadunandan Singh. It is, however, noticeable that in the telegram there is no mention of the brother of the Respondent No. 1 as the person who fed the staff. It is the father of the Respondent No. 1 who is mentioned in it. We do not attach any weight to such a telegram which also does not, strictly speaking, prove that either the staff or the voters were given food to eat. We, therefore, hold that the allegations of treating the voters with food or even guavas is not established by dependable evidence.

Clause (x) and Particular No. 6.

This clause which is repeated in particular No. 6 is as follows:

“That in spite of threats, official support and undue influence when the Respondent No. 1 found that he could secure very few votes on 17th January 1952 at Ichauli and fewer number of votes at Unchehra on 19th January, 1952 the supporters of the Congress namely Amar Nath and Shyam Lal on the instigation of Shri Shambhu Prasad Tamer, seriously beat the K. M. P. Party worker, Shri Dadoli Ram of village

Ichauli on the evening of 19th January 1952. The said Shri Dadoli Ram was on the point of death due to the injuries and was confined to bed in Uchchra Hospital for weeks."

In support of the allegation contained in this clause there is the solitary statement of Dadoli Ram (P.W. 20). His testimony is said to be corroborated by a copy of the statement of the accused in his case but admittedly the accused resiled from his statement later. This statement cannot, therefore, have any corroborative value. The statement of P.W. 20 alone is not dependable enough relating to the part ascribed to the Congress worker in the incident. We, therefore, decide the issue against the petitioner in the negative.

Particular No. 8

It runs as follows:—

"That the respondents Nos. 1 and 2 got printed and distributed a bulletin defaming the petitioner. The bulletin bears a fictitious name and there is no name of the Press. This was distributed in the first week of January, 1952."

Several bulletins and pamphlets have been filed before us by the petitioner which to our mind do not make out that the allegations contained therein were reasonably calculated to prejudice the prospects of the petitioner at the election except, perhaps, the printed bulletin Ex. 284. This bulletin, to say the least about it, is in bad taste, particularly as it refers to the character of a lady. The bulletin, however, appears to be more against the personal character or conduct of His Highness the Raja of Nagod than the petitioner, although the petitioner has not been spared as he was the Ex-Dewan of Nagod State. In the first place the petitioner did not examine the persons mentioned in the bulletin to depose that the allegations contained therein were baseless or false. The falsity of the statement relating to the personal character of the candidate was thus not made out, except on the testimony of the petitioner himself. The witnesses produced in support of the distribution of this bulletin 10 days before the polls, are not dependable on the point. They are Moti Lal (P.W. 6), Nathu Ram (P.W. 7), Nand Kishore (P.W. 8), Madhav Prasad (P.W. 9), Birran Singh (P.W. 10) and the petitioner (P.W. 28). There is intrinsic evidence in the bulletin itself that it was distributed soon after 5th October 1951. In its 6th paragraph there is a reference to a very recently held secret meeting held on 5th October 1951. The bulletin was perhaps distributed soon after 5th October 1951, which would be before the date of nomination of candidates. The petitioner did not complain in writing about the distribution of those bulletins to anybody. No name of the press is mentioned in the bulletin. There is also no evidence that the respondents Nos. 1 and 2 or their workers got these bulletins printed. The evidence of distribution of Ex. 284 by Dharam Dass (R.W. 30) stands rebutted by the testimony of Dharam Das who denies it and who is a respectable person of Nagod, being the nephew of the Nagar Seth. The respondents have also examined S. P. Verma (R.W. 26) to show that a copy of this bulletin was received in the S.P.'s office, Satna, as early as 27th October 1951, Baijnath (R.W. 23) who also denies having distributed any such bulletin, as a Congress worker and polling agent of Respondents Nos. 1 and 2 and Sadhu Lal (R.W. 33) who likewise denies its distribution. There being thus no reliable evidence to prove that the respondents Nos. 1 and 2 got this bulletin printed or distributed, no corrupt practice under section 123(5) has been established against the respondents Nos. 1 and 2. The Congress was not the only party opposing the K. M. P. Party candidates. The Socialist party was also against the K. M. P. Party in the last election in this constituency. It cannot, therefore, be said that no other party except the Congress could have distributed such a bulletin. We, therefore, over-rule the contention that the Respondents Nos. 1 and 2 had committed the major corrupt practice within the meaning of section 123(5) by the publication of the bulletin Ex. 284, or any other bulletin.

Particular No. 9.

It runs as follows:—

"That the Respondent No. 1 influenced the Government servant Mr. Chhotelal, the Presiding Officer at Pithaurabad to obtain his official support with the result that the Presiding Officer Shri Chhotelal at the instance of Shri Lakhan Singh the elder brother of Respondent No. 1 disallowed the petitioner's Polling Agent, Pt. Sadashiv Bajpai on 13th January 1952 to remain in the polling station. The fact was brought to the notice of the Tahsildar Nagod, Shri Raturi and the Circle Inspector of Police Nagod, Shri Jagjeet Singh who were present there. It was also reported to the Returning Officer.

There is hardly any truth in this allegation. The main reason why Sadashiva Bajpai, who was subsequently appointed the polling agent by the petitioner and who was not allowed to remain inside the booth as the polling agent of the petitioner, was because another polling agent of the petitioner who had signed the paperseals and who was working from the very beginning was present inside the booth. A mountain is sought to be made out of a molehill. The Presiding Officer evidently did not accept the revocation of the agency of the formerly appointed polling agent of the petitioner who had been present from the very beginning at the polling station. We, therefore, do not see any force in this allegation and decide the point against the petitioner.

All the points raised in connection with these two issues have thus been decided against the petitioner and hence we decide these two issues against him in the negative.

(Sd.) SHEO NARAIN VAISH.

(Sd.) L. N. MISRA.

In accordance with the findings of the majority of members,

ORDERED

The petition fails and is dismissed. We award Rs. 400 as costs, including the counsel's fee, to the Respondents Nos. 1 and 2 against the petitioner.

NOWGONG;

The 10th November, 1953.

(Sd.) SHEO NARAIN VAISH, *Chairman*.

(Sd.) L. N. MISRA, *Member*.

(Sd.) P. LOBO, *Member*.

DISSENTING JUDGMENT

I have, with due respect, disagreed with my colleagues on some issues or portions of some issues. I give below my reasons for the same:—

Issues Nos. 1, 2 and 5.—It is my view that there has been no defect in the design or manufacture of the ballot boxes. One of the two persons *viz.* Jang Bahadur Singh who demonstrated before the Tribunal how the ballot boxes could be opened without damaging any of the seals or breaking the twine admitted that if the wax seals were put quite close to the knots of the twine on the lid then it would be impossible to open the box in the manner he and his companion Jai Singh did. I have discussed this at some length in E. P. No. 257 of 1952, *Vidya Vati Vs. Mahendra Kumar* dated 10th November 1953. As there is no inherent or intrinsic defect in the manufacture of the ballot boxes, I hold that non-compliance with any election law or rule has not been established.

(Sd.) P. LOBO.

ANNEXURE

IN THE COURT OF THE ELECTION TRIBUNAL NOWGONG, V. P.

PRESENT

Chairman.

1. Shri S. N. Vaish, B.A., LL.B., Retd. D. & S. Judge, U.P.

Members.

2. Dr. L. N. Misra, M.A., LL.B., Ph.D., Retd. D. & S. Judge, U.P.

3. Shri P. Lobo, Advocate, Supreme Court.

ELECTION PETITION No. 303 OF 1952

Saraju Parsad Namdeo, s/o Shri Ram Karan Namdeo, r/o Nagod, District Satna—*Petitioner*.

Vs.

1. Shri Gopal Saran Singh.
2. Shri Het Ram.
3. Shri Fakir Chand Chopra.
4. Shri Pandit Ram Phal.
5. Shri Raj Bahadur Singh.

6. Shri Bans Swaroop.
7. Shri Ram Dass.
8. Shri Babu Lal.

This is a petition under section 81 of the R. P. Act of 1951, for the declaration of the election of Respondents 1 and 2 from the Nagod constituency to the V. P. Legislative Assembly as void. The petitioner and the Respondents Nos. 3, 4 and 5 were the candidates for the general seat while the Respondents 2 and 6 to 8 are alleged to have been the candidates for the reserved seat in this constituency. The Respondents 1 and 2 were declared returned from this constituency. The petitioner has detailed in his petition various grounds of which he seeks the aforesaid declaration. Various issues were framed from the pleadings of the parties and, out of them the following preliminary issues have been first taken up for consideration:—

Issue No. 10.—Should the petitioner be called upon to furnish additional security under section 118 of the R. P. Act, 1951?

Issue No. 11.—Was Sudama known as Ram Dass? If not is the petition bad for non-joinder and mis-joinder?

Issue No. 12.—Are the allegations in clauses (b), (c), (p), (r), (s), (t), (u), (v), (w), and (y) of para. 6 of the petition and particulars Nos. 2, 3, 4, 5, 7 and 9 of the list too vague, general and ambiguous and should they not be permitted to go to trial?

Issue No. 14.—Is the petition bad for the non-joinder of Shri Lal Bhagevendra Singh and should it be dismissed?

Issue No. 15.—Whether it is competent to the petitioner to adduce evidence to establish whether Sudama is known as Ram Dass?

FINDINGS

Issue No. 10.—There is nothing particular in this case calling for the additional security and so we do not call upon the petitioner to furnish any additional security than that already furnished by him. The issue is therefore decided in the negative.

Issue No. 11.—Parties have adduced their respective evidence. The electoral roll for this constituency is marked Ex-D at Sl. No. 141 appears the name of Sudama s/o Naraina. In the nomination paper filed by Sudama we find his name as Sudama. The list of valid nominations (the final list) published in the Extraordinary Gazette of India Part I Section 1, dated the 10th June, 1952, mentions Sudama as one of the candidates (*vide* Ex. A). The petitioner has examined Baba Din, Ramkripal, Ram Sia and Sudama whereas the Respondents have examined Umashanker Khare, Nazir of the District Judge's Court Satna, Ram Manohar Misra, Office Supdt. D.C. Office Satna, Chhoteyal Postman, Akaliya, Jagjahir Singh Babulal, Fakir Chand Chopra and Laxami Prasad.

In his petition, the petitioner has described the Respondent No. 7 as Ram Dass (Socialist) District Satna. When the Notice from this Tribunal was issued to the District Judge, Satna for service on the Respondent No. 7, it was returned with the following endorsement by one Ram Dass:—

“Respected Sir,

Most respectfully I beg to lay the following few lines for your consideration and information:—

That I never sought the election from the Socialist. Again, Sir, my name is Ramdass Verma son of B. Munnalal Ji and I never stood from the Socialist though I am a Socialist Member. One Socialist from Nagod constituency was Fakir Chand Chopra and for the other's name I am unaware who sought the election in Nagod constituency (*vide* Ex-B) Uma Shanker Khare R.W. 1 states that he, on the report of the process server, made the endorsement on this notice to the effect that the full address of Ram Dass, including his residence etc., are not mentioned in the notice and that full particulars of the person concerned may please be given so that the service be effected and forwarded the notice to the Chairman of the Tribunal. Thereupon the petitioner was called for to give full address of the Ram Dass Respondent No. 7 and thereupon the petitioner gave the full address of Respondent No. 7 as Ram Dass alias Sudama, son of Naraina, village Amodha, P.O. Satna, Tahsil Raghurajnagar, District Satna.

The Tribunal then sent the Notice to the Respondent No. 7 by registered post according to the address so furnished by the petitioner. That letter was returned as 'refused' with the endorsement of the postman Chhoteylal R.W. 3 to the following effect: "Addressee refused to take it saying that his name was not Ram Dass but Sudama and that when any Notice addressed to Sudama will be received he will take it and so this letter is returned as there is no person bearing both names in this village." In the face of the entries, in the aforesaid documents, it lay heavily on the petitioner to prove the alias of Sudama. Coming to the oral evidence of the Petitioner, we find that Ramkripal P.W. 2 clearly admits that Sudama is not called by any other name besides Sudama or Sudama Dass or Sudama Ji and that according to petitioner's own witness Ramkripal Sudama was not known as Ram Dass. Sudama himself, examined by the petitioner, states that he was not known or called by any other name besides Sudama or Sudama Dass. The petitioner treated Sudama as hostile witness and confronted him with a peculiar document Ex-1 which the petitioner himself appears to have procured from Sudama on 12th February 1953 by taking him through Baba Din (P.W. 1) to Allahabad. The petitioner himself has not cared to enter the witness box to show how Ex-1 came into his custody and how it came into existence. From the cross examination of Sudama by the Petitioner's learned counsel it appears that at first Sudama went before a Magistrate at Satna where his statement about his real name, namely Sudama, was recorded by the Magistrate, probably at the instance of the Respondents on 13th January 1953, but subsequently the petitioner managed through Baba Din aforesaid to take Sudama to Allahabad and there obtained the Ex-1 and then brought Sudama to Nowgong on the date of hearing, although meanwhile it was the Respondent who got summons for the attendance of this witness issued. This Tribunal calls Ex-1 a peculiar document because it purports to be written in Nagri as an affidavit. It purports to bear the signatures of two Magistrates, one a stipendiary Magistrate who merely writes 'signed before me' over his signature, and the other, a special Magistrate I class who writes merely "attested" above his signature. None of them mentions that the contents of the document were read out to, and sworn by Sudama. At the same Sudama swears that he can only sign his name in Nagri but cannot read that script. Considering the entire evidence on the record we have no hesitation in holding that Sudama was never known as Ram Dass and the petitioner has, at a late stage, introducing the alias of Ram Dass as Sudama when he found, for reasons best known to him, that he had joined as a Respondent to his petition one Ram Dass instead of Sudama. We therefore hold that the petitioner joined Ram Dass who was not a necessary party at all and has failed to join Sudama as a Respondent.

As already observed, it was Sudama who was entered in the Election Roll, who had filed the nomination paper and who was published as a validly nominated candidate at this Election in the Official Gazette. It may here be mentioned that before the issues were framed the petitioner presented an application for amendment of this petition by introducing Sudama as an alias of Ram Dass Respondent No. 7 but this Tribunal rejected it and this issue was framed. Subsequently, at the far end of the arguments, the petitioner presented another application for amendment of his petition praying that Sudama be entered in the petition with the alias of Ram Dass. That application is virtually a repetition of the previous application and the order of the Tribunal on the previous application has become final under section 7 of the Act and we feel that we cannot review that previous order.

The result is that Sudama who has actually gone to the polls is not before the Tribunal as the Respondent to this petition. We have now to consider what is its effect. Section 82 of the Act provided that a petition shall join as Respondent to his petition all the candidates who were duly nominated at the election. Section 85 provides that if the provisions of sections 81, 83 or 117 are not complied with, the Election Commission shall dismiss the petition. Section 90(4) provides that notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of sections 81, 83 or 117. Section 98 provides that at the conclusion of the Trial of the Election petition, the Tribunal shall make any of the four orders specified in clauses (a) to (d) of that section. It is thus obvious that while the Legislature has made it mandatory for the election commission under section 85, and discretionary with the Tribunal under section 90(4) to dismiss a petition for non-compliance with the provisions of sections 81, 83 or 117, it has made it mandatory for the Tribunal to dismiss the Election petition under clause (a) of section 98 only at the conclusion of the trial of the petition. Hence it is obvious that the Legislature has not contemplated a non-compliance with the provisions of section 82 to be fatal to a petition and has made it mandatory for the Tribunal to go the whole length of the trial thereof in spite of the fact that there has been no proper compliance with the provisions of section 82.

Under the circumstances, this Tribunal is of the opinion that the question whether the non-joinder of a person as Respondent is fatal to the petition or not will depend, in each case, upon the answer to a further question whether the Tribunal can safely grant to the petitioner the relief prayed for without adversely affecting the interest of the party who has not been joined and who ought to have been joined under section 82. In the present case, the Tribunal finds that Sudama went to the polls but considering the number of votes secured by him he failed to be declared as elected and the Respondent No. 2 was declared elected for the reserved seat in this constituency by the large margin of votes. The Respondent No. 1 was declared elected for the remaining seat in this constituency by an overwhelming majority. The relief sought by the petitioner in the present case is a declaration of the election of the Respondents Nos. 1 and 2 from this constituency as void. If, at the conclusion of the trial of the petition, this Tribunal comes to grant the relief sought, the effect of that declaration will be that the Respondents 1 and 2 will be unseated and the election in this constituency shall be held afresh and Sudama will get a fresh opportunity to contest the election. To this extent Sudama will stand to gain by the order that may be passed even behind his back. We feel that the non-joinder of Sudama is not fatal to this petition. In our opinion the Legislature has deliberately not made the compliance with the provisions of section 82 fatal to the petition and has meant its provisions to be directory in spite of the use of the word "shall" in that section. We therefore hold that the non-joinder of Sudama is not fatal to the petition.

Issue No. 12.—We have gone through the pleadings of the parties. There is material in the petition and in the list of particulars which when taken together gives sufficient notice to the Respondents of the charges which they have to meet and therefore they can go to trial. We are of the opinion that the allegations are not vague, general and ambiguous.

Issue No. 14.—Lal Bhagevendra Singh admittedly filed his nomination paper which had been accepted by the Returning Officer under section 36(6) of the Act but had withdrawn within the prescribed period. Divergent views of various Tribunals have been brought to our notice on the point whether a withdrawn candidate is, or is not, a duly nominated candidate at the election. Assuming for argument's sake that Lal Bhagevendra Singh fills the roll of a duly nominated candidate at the election, we have already held above that the non-joinder of a candidate like Sudama who had actually gone to the polls is not fatal to this petition. In this light Lal Bhagevendra Singh stands in a weaker position than Sudama and we hold that his absence is not fatal to the petition.

Issue No. 15.—On the date of evidence the Respondent's learned counsel did not press this issue and hence no finding on this issue is now called for.

Nowgong;
The 20th February, 1953.

(Sd.) SHEO NARAIN VAISH, *Chairman.*

(Sd.) L. N. MISRA, *Member.*

(Sd.) P. LOBO, *Member.*

[No. 19/303/52-Elec.III/7717.]

By Order,
P. R. KRISHNAMURTHY, *Asstt. Secy.*

